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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,070	03/22/2004	Johannes Theodorus Maria Slingerland	VER-180XX	1513

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EXAMINER

NGUYEN, TRINH T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,070	SLINGERLAND ET AL.	
	Examiner	Art Unit	
	Trinh T. Nguyen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Election dated 10/21/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 12, 15, 17-19 and 21-41 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 and 31-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12, 15, 17-19, 21, 22 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/26/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I, claims 1-6,12,15,17-19,21-37, in the reply filed on 10/21/05 is acknowledged. Even though Applicant states that the election was elected with traverse, the election was actually elected without traverse since Applicant presented no reasons explaining why the restriction requirement is improper. Also, it is noted that claims 23-26,31-37 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention (i.e. claims 23-26,31-37 are not directed to the elected Species 2, a flower box assembly as shown in Figures 12-16).

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: dolly 1, the inner box holder 104', and an extension of the sidewalls 106. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

Art Unit: 3644

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2,12,17-19,27,29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefinite phrases too numerous to mention completely. Applicant is encouraged to carefully review the claims and rewrite them so that all claimed limitations are positively and clearly set forth and it can be determined what is being claimed.

The following are examples only and not intended to be a complete listing thereof:

In claim 2: "the inner box is placed in the second inner box holder, wherein...up alongside the inner box" is confusing since it is unclear if this "inner box" is the same "inner box" as mentioned in claim 1; therefore, it is not clear what is being claimed.

In claims 12,17-19, and 27: "the inner box holder" is confusing since it is unclear if this "inner box holder" is the same "first inner box holder" as mentioned in claim 1; therefore, it is not clear what is being claimed.

In claim 27: "two different inner box holders and/or inner boxes with different heights are provided" is confusing and therefore it is not clear what is being claimed; "preferably" is indefinite and vague.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6,12,17,18,21,22,30 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1306319 (EP'319).

For claim 1, EP'319 discloses an inner box and a first inner box holder.

For claim 2, EP'319 discloses a second inner box holder such that the second inner box holder rests on an upper side of the first inner box holder.

For claim 3, EP'319 discloses that the inner box holders can be made of different sizes.

For claim 4, EP'319 discloses that the sidewalls of the inner box holders taper slightly towards each other.

For claim 5, EP'319 discloses that at least one sidewall of the inner boxes tapers slightly.

For claim 6, EP'319 discloses that in the at least one sidewall of the inner box holders, at least one light passage opening.

Regarding the intended use of the first and second box holders and the inner box as claimed in claims 1-6,12,17,18,21,22,27,29-30, it is noted that it is well settled case law that such limitations (for example only, "the inner box being connectible with the inner box holder", "the inner box is placed in the second inner box holder, wherein the

Art Unit: 3644

second inner box holder is subsequently pulled up alongside the inner box", "the second inner box holder rests on an upper side of the first inner box holder", "the inner box is detachably connectible with the inner box holder when the inner box holder is in a first position, and the inner box is also detachably connectible with the inner box holder when the inner box holder is in an inverted, second position"), which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647; and MPEP 2114 & 2115. MPEP 2114 which states: A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claims. Ex parte Masham, 2 USPQ2d 1647.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 15, 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1306319 (EP'319) in view of Ramsay et al. (US5042674).

Art Unit: 3644

EP'319 lacks to mention the use of engagement means (i.e., toothed provision) to engage the inner box holders onto each other to form a stable stacking.

Ramsay et al. teaches the concept of using a plurality of engagement means (38,50,62,64) to engage a plurality of box holders onto each other to form a stable stacking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the box holders of EP'319 so as to include a plurality of engagement means, in a similar manner as taught in Ramsay et al., since to do so would provide a more stable stacking manner.

10. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1306319 (EP'319) in view of JP2003-170981 (JP'981).

EP'319 lacks to mention an inner box having a circumferential projection which engages an edge of the inner box holder.

JP'981 teaches a flower box assembly wherein an inner box 2 having a circumferential projection which engages an edge of the inner box holder 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the flower box assembly of EP'319 so as to include an inner box having a circumferential projection which engages an edge of the inner box holder, in a similar manner as taught in JP'981, since to do so would provide a more stable stacking manner.

Art Unit: 3644

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T. Nguyen
Primary Examiner
Art Unit 3644

1/8/06